IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 525 of 2000

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJANAND BHIKHAJI KHANDARE (MOCHI)

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 525 of 2000

MR BC DAVE for Petitioner

MR HL JANI APP for Respondent

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 05/12/2001

ORAL JUDGEMENT

Heard the learned advocates.

2. This revision application preferred under Section

397 read with Section 401 Cr.P.C. arises from the judgment and order dated 20th October, 2000, passed by the learned Assistant Sessions Judge, Surat, below application Exh.7 in Sessions case No.268/99.

3. The petitioner before this Court is the accused in the above referred Sessions case No.268/99 and the husband of the deceased Bai Nanda. It appears that the petitioner and the deceased Bai Nanda were married some 11 years before the date of incident. The deceased Bai Nanda committed suicide on 29th May, 1999. In respect of the said death of the deceased Bai Nanda the aforesaid Sessions case No.268/99 has been lodged against the petitioner. The petitioner is accused of having committed offence punishable under Sections 498A and 306 I.P.C. The petitioner moved application Exh.7 for discharging him from offence punishable under Section 306 I.P.C and to remit the matter to the learned Judicial Magistrate, First Class, Surat, to try the offence punishable under Section 498A I.P.C against the petitioner. Under the impugned judgment and order dated 20th October, 2000, the learned Trial Judge was pleased to reject the said application. Feeling aggrieved, the petitioner has preferred the present petition.

4. Mr.Dave has submitted that the complaint against the petitioner has been lodged by the father of the deceased Bai Nanda and does disclose the elements of cruelty as envisaged under Section 498A I.P.C towards Bai Nanda. However, the complaint does not disclose any offence punishable under Section 306 I.P.C. Mr.Dave has relied upon the judgement of this Court in the matter of Rameshbhai Ranchodbhai and Anr. v. State of Gujarat (1989 (2) G.L.R. 834). In the said matter this Court hearing the appeal against conviction held that;

> "It cannot be said with any stretch of imagination that a persons subjecting a woman to cruelty is guilty of abetment. Sections 306 and 498A are two independent Sections in the Indian Penal Code. While considering the guilt or otherwise of an accused for the offence punishable under Section 306 I.P.C., we have to read only Sections 306 and 107 I.P.C. Section 498A I.P.C. is out of question so far as the question of abetment is concerned".

While considering the scope and ambit of word abetment occurring in Section 306 I.P.C., the learned Judges have held that;

"For establishing abetment covered by Clause Thirdly read with Explanation 2, it has to be established that there was intentional aiding. Mere aiding may not amount to abetment unless it is intentional. Mere act or omission on the part of a person which, in fact, results in facilitating the commission of the offence will not satisfy the requirements of Explanation 2 of Clause Thirdly. What is required to be established is that the person against whom the charge of abetment is levelled has done something in order to facilitate the commission of the offence. What is, therefore, required is that the person against whom charge of abetment is levelled has to do something purposefully which facilitates the commission of the offence".

5. Be it noted that the trial in the present case is at the stage of framing of charge. The commission of offence is yet to be proved. It is not disputable that the deceased committed suicide in the house of the petitioner. It would be too early to hold that the petitioner has not committed offence punishable under Section 306 I.P.C. The application for discharge from offence under Section 306 I.P.C. made by the petitioner has rightly been rejected by the Trial Court. The Revision Application is therefore, dismissed. Rule is discharged. Interim-stay if operative stands vacated.

(Ms.R.M. Doshit, J.)

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